

AD-A050528

DEFENSE SYSTEMS MANAGEMENT COLLEGE

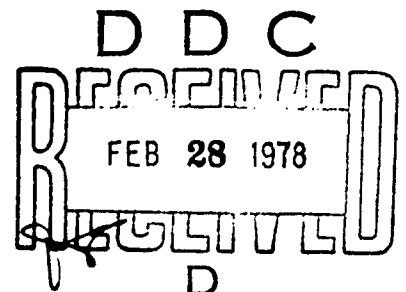


PROGRAM MANAGEMENT COURSE INDIVIDUAL STUDY PROGRAM

FOREIGN MILITARY SALES (FMS)
POLICY AND PROCEDURES

STUDY PROJECT REPORT
PMC 77-2

JOEL W. MARSH
PRATT & WHITNEY AIRCRAFT
WEST PALM BEACH, FLA.



FORT BELVOIR, VIRGINIA 22060

DISTRIBUTION STATEMENT A

Approved for public release;
Distribution Unlimited

REPORT DOCUMENTATION PAGE		READ INSTRUCTIONS BEFORE COMPLETING FORM
1. REPORT NUMBER	2. GOVT ACCESSION NO.	3. RECIPIENT'S CATALOG NUMBER
4. TITLE (and Subtitle) FOREIGN MILITARY SALES (FMS) POLICY AND PROCEDURES		5. TYPE OF REPORT & PERIOD COVERED Study Project Report 77-2
		6. PERFORMING ORG. REPORT NUMBER
7. AUTHOR(s) JOEL W. MARSH		8. CONTRACT OR GRANT NUMBER(s)
9. PERFORMING ORGANIZATION NAME AND ADDRESS DEFENSE SYSTEMS MANAGEMENT COLLEGE FT. BELVOIR, VA 22060		10. PROGRAM ELEMENT, PROJECT, TASK AREA & WORK UNIT NUMBERS
11. CONTROLLING OFFICE NAME AND ADDRESS DEFENSE SYSTEMS MANAGEMENT COLLEGE FT. BELVOIR, VA 22060		12. REPORT DATE 77-2
		13. NUMBER OF PAGES 58
14. MONITORING AGENCY NAME & ADDRESS (if different from Controlling Office)		15. SECURITY CLASS. (of this report) UNCLASSIFIED
		15a. DECLASSIFICATION/DOWNGRADING SCHEDULE
16. DISTRIBUTION STATEMENT (of this Report) UNLIMITED		
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> DISTRIBUTION STATEMENT A Approved for public release; Distribution Unlimited </div>		
17. DISTRIBUTION STATEMENT (of the abstract entered in Block 20, if different from Report)		
18. SUPPLEMENTARY NOTES		
19. KEY WORDS (Continue on reverse side if necessary and identify by block number) SEE ATTACHED SHEET		
20. ABSTRACT (Continue on reverse side if necessary and identify by block number) SEE ATTACHED SHEET		

DEFENSE SYSTEMS MANAGEMENT COLLEGE

STUDY TITLE: Foreign Military Sales (FMS) Policy and Procedures

STUDY PROJECT GOALS: To determine: how Foreign Military Sales have evolved; the effect of Foreign Policy on Foreign Military Sales; and the procedures involved in implementing a Foreign Military Sale.

STUDY REPORT ABSTRACT: This Learning Paper was undertaken to provide the author with a basic understanding of Foreign Military Sales. It provides a tracking of the evolution of Foreign Military Sales from the 1930's through the International Security Assistance and Arms Exports Control Act of 1976. The procedures for processing a Foreign Military Sale addressed in this Learning Paper are based on the International Security Assistance and Arms Export Control Act of 1976. These procedures include the Restraints and Prerequisites as dictated by Congress in the legislation, and provide the framework for conducting a government-to-government Foreign Military Sale. The development of the Letter of Offer and Acceptance (DD Form 1513) and the importance of specifying the desired terms and conditions of this contractual document are discussed. In addition, the financing available for a government-to-government Foreign Military Sale is addressed.

ACCESSION for	
NTIS	White Section <input checked="" type="checkbox"/>
DDC	Self Section <input type="checkbox"/>
UNANNOUNCED	<input type="checkbox"/>
JUSTIFICATION.....	
BY.....	
DISTRIBUTION/AVAILABILITY CODES	
Dist.	Avail. and/or SPECIAL
A	

Program/Project Management, Foreign Military Sales (10.02.08)

NAME, RANK, SERVICE	CLASS	DATE
Joel W. Marsh, Industry	PMC 77-2	9 Nov 1977

FOREIGN MILITARY SALES (FMS)
POLICY AND PROCEDURES

Study Project Report
Individual Study Program

Defense Systems Management College
Program Management Course
Class 77-2

by

Joel W. Marsh
Pratt & Whitney Aircraft
West Palm Beach, Fla.

Study Project Advisor
William H. Cullin

This study project report represents the views, conclusions, and recommendations of the author and does not necessarily reflect the official opinion of the Defense Systems Management School or the Department of Defense.

EXECUTIVE SUMMARY

This Study Project was undertaken to familiarize the author with the Foreign Military Sales arena. The author had no previous experience in Foreign Military Sales, but the activities of his company in this area have increased significantly over the past several years.

The subject of Foreign Military Sales was approached by looking at the formal policies and procedures that govern and control these complicated international, political, and economic activities.

The most significant conclusion drawn from this research is that the Foreign Military Sales Policy reflects the changing public opinion and attitudes, through the Congress, in the form of foreign policy legislation. The variables that affect foreign policy include the U.S. internal political-economic-social environment and the changing attitudes and conditions throughout the world.

It appears that significant change will occur in the near future, relative to Foreign Military Sales, as a result of President Carter's strong stand on arms control, Congress concern with visibility and control, and the need for balance of payments resulting from the tremendous cash out-flow for petroleum.

This paper can be used to briefly understand the background on Foreign Military Sales Policy and Procedure; and it should be recognized that this Study Project Report reflects the information and thoughts collected by the author during his limited research.

ACKNOWLEDGEMENTS

The author wishes to acknowledge the contributions made by individuals during the research and preparation of this Individual Study Project Report.

Mr. Robert L. Mullen, Singer Corporation, Washington Director of International Programs, and Mr. John K. Harding, Pratt & Whitney Aircraft Group, Washington Director of International Programs, provided valuable guidance and access to personal information on Foreign Military Sales.

Mr. William H. Cullin, Defense Systems Management College Faculty, served not only as faculty advisor, but also provided access to his extensive files on Foreign Military Sales.

The author wishes to extend a special acknowledgement to his wife, Joyce, who provided the rough and final typing and proofing of this paper.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
ACKNOWLEDGEMENTS	ii
SECTION:	
I. INTRODUCTION	1
Purpose	
Research Methodology	
Report Organization and Outline	
II. BACKGROUND	4
Military Foreign Sales	
Authority of the Congress	
Role of the State Department	
Role of the Commerce Department	
Role of the Department of Treasury	
Role of the Department of Defense	
III. EVOLUTION OF FOREIGN MILITARY SALES POLICY	15
Security Assistance Prior to World War II	
Lend Lease Act of 1941	
Mutual Defense Assistance Act of 1949	
Mutual Defense Act of 1954	
Foreign Assistance Act of 1961	
Foreign Military Sales Act of 1968	
Foreign Assistance Act of 1971	
Foreign Assistance Act of 1974	
International Security Assistance and Arms	
Export Control Act of 1976	
IV. PROCEDURES FOR PROCESSING A FOREIGN MILITARY SALE. .	37
Restraints and Prerequisites	
Determination of Type of Sale	
Letter of Offer and Acceptance (DD Form 1513)	
Price and Availability (P&A)	
Financing Available for FMS	
V. SUMMARY AND CONCLUSION	48
BIBLIOGRAPHY	49

SECTION I

INTRODUCTION

Purpose

The primary purpose of this Study Project is to educate the author, who is a defense industry employee, on the varied aspects of Foreign Military Sales: the policy that guides it; the restrictions that control it; the procedures that implement it; and the role it plays in the U.S. Foreign Policy and economic environment.

A second purpose for this Study Project is to fulfill the requirements of the Individual Study Program, Course 901, at the Defense Systems Management College, Fort Belvoir, Virginia, where the author is a student in the Program Management Course 77-2.

Research Methodology

The material reviewed in the research process of this Study Project includes:

1. Documents available through the Defense Document Center (DDC), Cameron Station, Alexandria, Virginia.
2. Reports and Individual Study Papers from the Defense Systems Management College Library, Fort Belvoir, Va.
3. Congressional reports and related legislation on Foreign Military Sales and Foreign Policy.
4. Personal collection of DSMC instructor files on Foreign Military Sales, including articles, reports, committee reports and presentations.

5. Congressional Staff working papers.
6. Executive Branch briefing and press releases.
7. Informal interviews with industry associates.

The initial step of the Study Project was to determine a meaningful and definable scope consistent with the study time constraint. Although the author's interest is in Foreign Military Sales in general, an early assessment of the complexity of the subject narrowed the scope to the policies and procedures of the Foreign Military Sales activity.

The next important step of the Study Project was to formulate an outline which was consistent with the scope and detailed to achieve the desired learning objectives.

The final and most important step in the research design was to develop the Study Project within the framework of the outline and to the extent that it satisfies the primary scope and meets the desired learning objectives.

Report Organization and Outline

Section I is intended to provide an understanding of why and how this Study Project was conducted.

Section II provides a general introduction to Foreign Military Sales and stresses the importance of Foreign Military Sales both to the economic and foreign policy of the United States. Further, Section II briefly discusses the interrelations of the Departments of Commerce, State, Defense, and Treasury in the conduct of Foreign Military Sales.

Section III traces the evolution of policies and legislation that authorizes and controls military assistance to foreign governments from the late 1930's through the International Security Assistance and Arms Export Control Act of 1976.

Section IV addresses the procedures that are followed to consummate a Foreign Military Sale, including the Letter of Offer and Acceptance and the pricing transactions. The restraints and prerequisites for a Foreign Military Sale, based on the International Security Assistance and Arms Control Act of 1976, are outlined in this section.

Section V expresses the author's opinion, in a summary and conclusion, relative to complexities of Foreign Military Sales and President Carter's 19 May 1977 statement on arms transfer.

This Study Subject Report is organized as a Formal Report and is consistent with the Formal Report requirements described in the Defense Systems Management College Individual Study Program Handbook IX.

It is the intent of the author to give appropriate credit, through numerical referencing within the text, for information sources listed in the bibliography.

SECTION II

BACKGROUND

Foreign Military Sales (FMS)

Since the passage of the Modified Neutrality Act of 1939, the United States Government has increased its foreign military assistance dramatically. This assistance has evolved from a policy of basically financial assistance to the current policy which is largely one of Foreign Military Sales. Currently, the Foreign Military Sales vary from basic off-the-shelf items to complex aerospace systems such as the F15 and F16 aircraft. Foreign Military Sales consist of sales by the U.S. Government to a foreign government and from a U.S. contractor to a foreign government (commercial sales). Another means for providing foreign military assistance is Grant Aid.

Foreign Military Sales Acts through 1974 stated that the United States Government policy was that the arms export sales should be accomplished to the maximum extent by the private sector.⁸ This policy was further amplified by the DOD Directive 5132.3 which states "Direct procurement of U.S. defense articles and services from U.S. firms and manufacturers is preferred to procurement from the U.S. Government". Despite these stated policies, the trend has been for the majority of military sales to be FMS, and in 1976 Foreign Military Sales accounted for about 85% of the total military sales transactions. The International Security Assistance and Arms Control Act of 1976 de-emphasized the use of commercial sales in an attempt, by Congress, to control

the proliferation of arms.¹⁶

Foreign Military Sales is to be recognized as a valuable component of the U.S. Foreign Policy. The Nixon Doctrine, proclaimed by President Nixon in late 1969, provides the basis for transition from Grant Aid to Foreign Military Sales and outlined the following basic principles:⁷

1. The U.S. would provide military and economic assistance to friendly nations in which the obligations as well as the benefits of peace would be equally shared.
2. The combined strength of the U.S. and its allies should be sufficient in relation to that of others.
3. World peace would be enhanced by secure and economically stable allied government.

In addition to the Foreign Policy aspect of FMS, there are important economic benefits which are accrued to the U.S. Government and to the U.S. defense industries. These benefits include:¹

1. Increase in employment of the U.S. work force.
2. Aid in the U.S. balance of payment which is being burdened by the heavy cash out-flow for petroleum.

Authority of the Congress

The Congress authorizes the Foreign Military Assistance Programs by enactment of laws. During the past twenty-five years, approximately thirty pieces of legislation have been passed.¹⁶ These laws are brought about by the change in world environments, and reflect the Foreign Policy of the United States at any point in time. The "sense" of the Congress, as expressed in these acts,

is intended to convey general guidance on objectives and restraints. In order to insure that the intent of the law is being adhered, the Congress requires that the President submit to Congress for their review and disapproval if desired, all potential Foreign Military Sales prior to consummation. As a further assurance that the Foreign Military Sale is being conducted within the guidelines, the Congress requires annual reports from the President on Foreign Military Sales status.⁹

Role of the State Department

The State Department is primarily concerned with analyzing the U.S. Security Policy on a worldwide basis. The State Department develops policy plans within the framework of current laws to provide for the long term well-being of the United States.¹⁵ Within the State Department, the Bureau of Politico-Military Assistance generates policy guidance and procedures concerning issues affecting U.S. security, Foreign Military Sales, and arms control. The State Department, through the bureau, maintains constant contact with the Departments of Defense and Commerce in inter-departmental discussions affecting the International Trade.

Within the Bureau of Politico-Military affairs there are three offices that are involved in the coordination and approval of exports. They are:

1. Office of Security Assistance and Sales (SAS)
 2. Office of Munition Control (OMC)
 3. Office of Planning and Analysis for International Security
- The SAS Office coordinates Foreign Military Sales and

assistance grants to foreign countries. This office also analyzes the various regions and countries of the world to identify which countries should require military grants.

The Office of Munition Control (OMC) reviews all export applications for arms, ammunitions, implements of war, and any related technical data transfers. In addition, commercial products are reviewed if it is determined that they have possible military application. The OMC is the key office that makes the final decision concerning military and some commercial exports.

The Office of Planning and Analysis for International Security is basically responsible for coordinating the policy formulation groups of the Department of State, including the five regional bureaus. Each of the regional bureaus is headed by Assistant Secretaries of State and each is served by directors within their bureau who coordinate policy on a country by country basis. The U.S. Ambassadors provide the latest political assessment of any country as needed in the policy formulation.¹⁰

Role of the Commerce Department

The Commerce Department's basic function is to provide for the overall economic growth and technical development of the United States. Within this function, world trade expansion plays a vital role and is the primary responsibility of the Domestic and International Business Administration (DIBA). The DIBA, through its bureaus, conducts programs involving the following activities:¹⁰

1. Competetive assessment of U.S. industry in domestic

and world markets.

2. Expansion of exports.
3. Export control administration.
4. Federal recognition and participation in international expositions and trade fairs.

Within the Office of Domestic and International Business Administration, the Bureau of International Commerce (BIC) has the responsibility for developing and implementing the Department of Commerce export programs. The export development programs are determined on a country-by-country basis consistent with the foreign policy established by the Department of State. The Overseas Product Sale Group within BIC has the responsibility of assisting with the commercial sales portion of Foreign Military Sales. The Overseas Product Sales Group also serves as the focal point for all export opportunities originating from NATO organizations.

Role of the Department of Treasury

In the area of foreign trade, the Treasury Department is basically concerned with the possibility of U.S. exports ending up in nations that are hostile to the U.S. At the present time this means that the Treasury Department would prohibit exports to embargo countries such as North Korea, North Vietnam, and Cuba. The Treasury Department also monitors the transfer of goods to a third country to assure that the third country is not an embargoed country. Also, the Treasury Department, as part of financing of trade agreements, participates extensively in the

financial negotiations between the U.S. and foreign buyers. These Treasury Department activities are basically carried out by the Office of Foreign Assets Control and the Office of National Security.¹⁰

The Office of Foreign Assets Control (FAC) provides the monitoring of export activities of U.S. owned foreign businesses which are involved in the manufacture of products that have no U.S. manufactured components included in the end item. If the potential buyer of the end item is one of the embargoed countries, the FAC would attempt, through diplomatic channels, to prohibit the sale. In addition, the FAC evaluates the contracts between U.S. companies and foreign companies to assure that the arrangements are not beneficial to embargoed countries. It should be recognized that the Treasury Department, through the Office of Foreign Assets Control, exercises extensive control over goods exported from the U.S. and goods manufactured outside the U.S. by companies that have any U.S. ownership (minority representation as well as solely owned operations).

The Office of National Security (ONS) becomes involved in the international trade activity in three base areas:

1. U.S. Trade Policy.
2. Financing of trade agreements.
3. Expedite exports.

Relative to the U.S. trade policy formulation, the responsibility of ONS is to conduct economic analysis concerning impact upon the U.S. economy as well as the economy of the foreign country.

In the area of financing of trade agreements, ONS participates in the financial portion of the contract negotiations between the U.S. and the foreign buyer. It also reviews the trade agreements for credit risk evaluation and to assure the best utilization of U.S. Government backing to credit institutions. The ONS serves as a focal point to assess the progress of export programs during the lengthy government approval process. It is the intent of this office to monitor and expedite export programs.

The Treasury Department exercises broad control over export programs, both military and commercial, to assure that they are compatible with the U.S. Trade and Security Policies and that the export is the best interest of the U.S. and the receiving foreign country.¹⁰

Role of the Department of Defense

The principle government agency involved in the routine planning, implementation, and administration of Foreign Military Sales is the Department of Defense (DOD). Since the role of implementation and management of a Foreign Military Sale continues over a period of several years, DOD must provide continuous coordination with the other government agencies (Department of State, Commerce, and Treasury) to assure consistency with the rapid changes in policy resulting from the world social-political-economic triangle.

Within the Department of Defense, there are four offices that become involved in the sale of military items or commercial

items of military value to foreign governments. These offices are:⁸

1. Defense Security Assistance Agency (DSAA).
2. Assistant Secretary of Defense for International Security Affairs (ASD/ISA).
3. The elements of Army, Navy, and Air Force including the Joint Chiefs of Staff (JCS).
4. The Director, Defense Research and Engineering (DDR&E).

The top level DOD coordination on Security Assistance matters is accomplished through the Defense Security Assistance Council (DASC).

Within the Department of Defense, responsibility for the government-to-government Foreign Military Sales is with the Director, Defense Security Assistance Agency (DSAA), under control of the Secretary of Defense and with staff supervision by the Assistant Secretary of Defense/International Security Affairs. The DSAA was established in 1971 for the purpose of administering the approved Foreign Military Assistance Programs within the Department of Defense.⁸ The DSAA is charged with a variety of Foreign Military Sales functions, including the generation and maintenance of the procedural guidance through the Military Assistance and Sales Manual, DOD Manual 5105.38-M. Other functions, in addition to participating in the top level planning, programming, and reviewing of Foreign Military Sales, are:¹⁷

1. Conducting negotiations with the foreign countries.
2. Interfacing with and assisting U.S. industry in their

efforts to get export approval for industry to foreign government sales through the State Department.

3. Managing FMS credit arrangements and guaranties of private financing for FMS.

As indicated above, the Assistant Secretary of Defense/International Security Affairs (ASD/ISA) performs an important staff advisory function to the Secretary of Defense in the area of Foreign Military Assistance. The ASD/ISA develops policies concerning the international security and is in contact with the State Department.

The Offices of the Deputy Assistant Secretaries (Regional Desk) within the ISA provide military analysis for their regions throughout the world. These offices prepare threat analysis for a given country based on its potential enemy and the existing military capability of both countries. The product of this analysis would be to determine the types of weapons needed by the country under consideration to meet the threat potential.

The Director of Strategic Trade and Disclosure within ISA provides the official DOD position on any proposed military export or commercial export that has possible military application. This is coordinated with both the Department of Commerce and the State Department. These items are listed on the Department of Commerce Commodity Control List (commercial items) and the Department of State Munitions Control List (military items). The Director of Strategic Trade and Disclosure represents the Department of Defense in the Interagency Board meeting with the Departments of State, Commerce, and Treasury when reviewing exports.⁸

The three armed services, Army, Navy, and Air Force are basically responsible for presenting the services position on the proposed military assistance program. The service will, upon receipt of an export application from the State Department's Office of Munition Control (OMC), through the DOD Director of Strategic Trade and Disclosure, formalize the service position. The second function of the specific service involved in Foreign Military Sales activity is to assist DSAA during negotiations. The service can provide the detailed analysis and evaluations that are necessary during the negotiation process. The third area that the services become involved in the Foreign Military Sales activity is from the management and administration of the sale activity during its performance. These activities are performed in the following areas by services:

1. Army - Director of International Logistics.
2. Navy - Security Assistance Division.
3. Air Force - Military Assistance of Sales.

Other service related responsibilities are performed by the Joint Chiefs of Staff. They are responsible to the Secretary of Defense for assuring that the U.S. National Security Planning accounts for all existing or planned Military Foreign Sales. In addition, the Joint Chiefs of Staff are responsible for developing recommendations for the Security Assistance Programs of U.S. Allies. They are assisted by the Commanders of the Unified Commands and the Military Assistance Advisory Groups (MAAG). Under these Commanders of the Unified Commands, the Deputy Director of Research and Engineering (DDRE) is responsible for formulating

cooperative research and development between U.S. industry and industries of foreign countries. All requests by foreign countries looking for Research and Development partners in the U.S. are handled by DDR&E. With increased emphasis on joint research and development and on co-development such as the F-16 Program, the Office of DDR&E plays a vital role in the Foreign Sales Arena.¹⁰

SECTION III

EVOLUTION OF FOREIGN MILITARY SALES POLICY

Security Assistance Prior to World War II

Prior to World War II, the United States was basically a debtor nation that maintained a no-alliance tradition and a policy of isolation. However, the U.S. Government provided military services to some foreign governments in the form of advice, instruction, and training. During the 1930's the U.S. was primarily concerned with the internal problems created by the Great Depression, but the deterioration of the economic and political situation throughout the world made it difficult for the U.S. to retain this isolation policy.⁹

Relative to the world economic problems, the U.S. took several steps in an attempt to stabilize the situation. The first step was the Reciprocal Trade Agreements Act of 1934. This act was to stabilize trade relationships with non-aggressive powers and to create the Export-Import Bank of Washington, D.C. The Export-Import Bank was established to encourage international trade by providing loans to foreign governments.

A second step at stabilizing the economic situation was the Tripartate Declaration between the U.S., Great Britain, and France⁶ in 1936.

With the passage of the Neutrality Acts of 1935, 1936, and 1937, the U.S. reinforced its official neutrality and placed an embargo on the export of arms to countries already at war. These acts prohibited U.S. ships from transporting arms to unfriendly

ports and established government regulation of private export of arms to foreign governments. The Neutrality Act of 1939 repealed the arms embargo portion of the previous Neutrality Acts and allowed the manufacture and sale of U.S. goods to those countries who were financially capable of purchasing them. This act allowed the U.S. to provide war materials to the allies without committing direct U.S. support.⁶

Land Lease Act of 1941

Volume sales of military equipment began during World War II under the Land Lease Act of 1941. The Land Lease Act was to assist the war effort of the U.S. Allies by becoming the arsenal of democracy and was deemed important to the U.S. defense interest. The act did not commit the U.S. to war, but permitted the continued support of the U.S. Allies and encouraged the expansion of the U.S. defense industry. The Land Lease Act did not specify the terms and conditions for the repayment of goods and services purchased.

The Land Lease Act was established primarily to provide defense articles to Great Britain, but later included the Soviet Union and France. By the end of World War II the U.S. had supplied 48.5 billion dollars to 42 countries under the Land Lease Act. At the end of World War II Congress made it clear that they would not continue the Land Lease Program and it was gradually phased out on a bilateral basis with recipient countries.⁶

National Security Act of 1947

The National Security Act of 1947, commonly referred to as

the "Truman Doctrine", was a major step in the evolution of foreign assistance legislation since it acknowledged the United States' responsibility to world leadership and represented an initial commitment to the principle of collective security.⁴

The National Security Act of 1947 initiated a series of legislative actions that provided a global program of military assistance to numerous countries throughout the world. This act is recognized as the basis for the present Foreign Military Assistance Programs.

Mutual Defense Assistance Act of 1949

The North Atlantic Treaty Organization (NATO) came into being in 1949 and the Mutual Defense Assistance Act of 1949 authorized grant military aid for countries considered vital to our security and also permitted sales of equipment to other friendly governments. This act provided for three types of military aid to be supplied on a non-reimbursable basis:

1. Direct transfer of U.S. military equipment.
2. Expert technical assistance and training in the production and use of military equipment provided.
3. Machinery and materials to assist European countries in producing their own military items without interfering with the economic recovery.

Even though Foreign Military Sales were authorized in 1949, the volume of such sales under this act was negligible since most foreign nations were not financially able to purchase such equipment.

The emphasis shifted from the European countries to South East Asia after the Communist invasion of South Korea in 1950. This shift in emphasis also brought about a push to provide industrial raw materials for the production and build-up of defense articles.⁶

Mutual Security Acts of 1954

The relationship between Foreign Military Assistance and the U.S. Foreign Policy was integrated and strengthened in 1954 when the State Department was given total authority under the Mutual Security Act. Under this act the State Department began to control export licenses for arms, ammunition, and implements of war. This act recognized the "Cold War" between the Western Hemisphere and the Communist Bloc. It also recognized the importance of the economic relationship of long term competition between the superpowers in the development of the third world countries.

Although the Mutual Security Act was amended several times throughout the 1950's, the concept of Foreign Military Sales as a distinct entity began to surface by the end of the 1950's. This situation evolved because the U.S. balance of payments situation deteriorated and attention was focused on all causes of cash outflow from the United States.⁶

Foreign Assistance Act of 1961

In 1961, when President Kennedy took office, several changes were instituted concerning the legislative structure and execution of foreign assistance programs. The Foreign Assistance Act of 1961 consolidated the economic aid and the military assistance and sales under a single law. The Foreign Assistance Act (FAA)

of 1961 reaffirmed the necessity for foreign assistance as an important instrument of U.S. National Policy and reaffirmed U.S. support for NATO. The Foreign Assistance Act of 1961 also gave the Secretary of State (through the President) the authority to provide assistance to eligible countries by lease, exchange, or other means not necessarily limited to grants or sales.⁷

In 1961, Secretary of Defense Robert S. McNamara, created the Office of International Logistics Negotiations to actively promote the sale of military equipment to foreign governments. The objectives he outlined to be met in making such sales were:⁷

1. Promote the defensive strength of our allies, consistent with our foreign policy objectives.
2. Promote the concept of cooperative logistics and standardization with our allies.
3. Off-set the unfavorable balance of payments resulting from essential U.S. Military deployment abroad.

The emerging importance of Foreign Military Sales can be traced to the basic factors that occurred in the 1960's:

1. Large military surpluses of World War II had been depleted by grant aid programs and the Korean War.
2. The economic and industrial recovery of Europe no longer required U.S. Grant Aid.
3. Decreases in grant aid and increases in military sales were viewed as one way to decrease the increasing balance of payment debt.

During the mid 1960's, aggressive salesmanship of the

International Logistics Negotiations Office, combined with the use of the credit sale revolving fund and a DOD arrangement with the Export-Import Bank that extended credit to countries not identified to the bank, resulted in sharp criticism from the Congress. A Senate Foreign Relations Committee Staff Report cited lack of information, weaknesses in inter-departmental coordination, and a failure to reconcile arms control policies with arm sales programs. This report recommended an increase in legislative visibility and control.

Foreign Military Sales Act of 1968

The Foreign Military Sales Act of 1968 was passed as a direct result of the Congressional dissatisfaction with operating techniques of Foreign Military Sales under the Foreign Assistance Act of 1961. This new act clarified the goals, authorization, restraints and controls governing the administration of Foreign Military Sales. A reorganization occurred in the Department of Defense, whereby the former International Logistics Negotiations Office (sales) and the Directorate of Military Assistance (Grant Aid) were combined in a new office under the Deputy Assistant Secretary for Military Assistance and Sales.⁵

The Foreign Military Sales Act of 1968 separated sales from other types of foreign military assistance. The act provided for the sale of U.S. produced military equipment and services on a reimbursable basis to friendly foreign governments and international organizations.

When enacting the Foreign Military Sales Act of 1968, the

Congress established the following sales policy:⁶

1. Declared the ultimate goal of the U.S. to be a world free of the dangers and burdens of armaments.
2. Affirmed the increasing cost and complexity of defense equipment and recognized that there continues a need for international defense cooperation to maintain peace and security.
3. Established that the United States will facilitate the common defense by entering into international arrangements with friendly countries on projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve national defense requirements and objectives of mutual concern.
4. Authorized sales to friendly countries to equip their forces with due regard to impact on social and economic development and on arms races.
5. Declared that ~~all~~ such sales be approved only when they are consistent with the foreign policy interests of the United States.

Some Congressmen had become impatient with the nature and extent of U.S. involvement overseas (Vietnam) and were concerned that the activity of supplying arms or military equipment might lead to further involvement. They felt that our arms sales, unless properly controlled, might encourage a furtherance of the arms race in certain areas of the world. To insure the basic

policy of the Foreign Military Sales Act was carried out as intended, Congress also included guidelines and specific restraints to govern the administration of U.S. Foreign Military Sales.

Foreign Assistance Act of 1971

For the first time in the history of the Foreign Aid Program, the Senate, in 1971, refused to approve the economic and military assistance programs. Conservatives felt that the billions spent previously on foreign aid had failed to gain international support for U.S. policies; while liberals contended that the aid mechanism had been taken over by military considerations and was not effective in its humanitarian efforts.¹¹

Because of these split and varying opinions, the House and Senate went into conference. Prior to, and during this time, several bills were presented and rejected. The conference was deadlocked for a month over the Senate passed ammendment to the Foreign Assistance Program calling for the withdrawal of U.S. Forces from Vietnam within six months. This only served to aggravate the situation and was eventually deleted.

Throughout the period of House and Senate debates over the Foreign Assistance Program, the subject of Foreign Military Sales was not the primary issue of concern. The House Committee did recognize the desire to give the President the authority to suspend sales to nations whose current activities appeared not to be consistent with the United States Foreign Policy. At the same time, the Senate compromised a request from the President on

limits on military credit sales to Latin America and African Governments. In reaching this compromise, Senator Fullbright, Chairman, Senate Foreign Relations Committee, expressed his viewpoint as follows:

"The United States should not encourage the nations of Latin America and Africa to spend their scarce resources on arms which they neither need nor can afford.... the argument that they will buy elsewhere if we do not sell to them makes little sense if they should not have the planes and tanks in the first place".

"What this is all about is an effort on the part of the Administration to improve our balance of payments by the sale of arms....these countries do not need these arms".

Although Foreign Military Sales was not a major issue during the passage of the 1971 Act, several paragraphs in the bill were significant to the Foreign Military Sales activity. The significant provisions were:¹¹

1. The annual ceiling on military assistance and sales to Latin America was increased. Furthermore, the authority of the President to waive this ceiling in the interest of national security was limited.
2. Obligational authority of \$500 million was established for Fiscal Year 1972 military credit sales. The ceiling on military credits was set at \$550 million, of which \$300 million was set aside for Israel and P.
3. A provision was included which required decisions .

relating to providing military sales credits to specifically take into account whether such credits would:

- a. Contribute to an arms race.
 - b. Increase the possibility of outbreak or escalation of conflict.
 - c. Prejudice the development of bilateral or multilateral arms control arrangements.
4. A provision indirectly related was included which required the President to suspend assistance to any country that failed to take appropriate steps to prevent illicit drug trading. Foreign Military Sales were included under the "assistance" heading.
 5. The ceiling on excess defense articles that could be furnished to foreign nations was raised from \$150 million to \$185 million.
 6. Assistance to both Greece and Pakistan was prohibited unless the President determined it was in the national security interest to provide it. This prohibition included Foreign Military Sales.
 7. Provisions were added requiring advance reports to the Congress concerning co-production and licensing arrangements for defense related items, and an annual report to the Congress on all foreign assistance actions conducted during any given fiscal year.

It was obvious from the reaction of the Congress during this enactment process of the Foreign Assistance Act of 1971

that there was grave concern over the role of Foreign Military Assistance. This reaction appeared to have resulted from Congress' desire to be kept informed of significant Foreign Military Sales activities, to retain control of the expenditure of government funds associated with the Foreign Military Sales program, and to use the program in the furtherance of U.S. policy objectives. Although the policy toward Latin American Countries was well intended in the Foreign Military Assistance of 1971, it did not prove to be viable in view of the reality of the situation.⁵

This policy resulted in a deterioration of relations between Latin America and the United States. Latin America was forced to purchase equipment from other countries. This resulted in taking more away from social and economic development than would have been if they were permitted to purchase the U.S. equipment that they wanted in the first place. Perhaps of greater importance however, is that U.S. actions in this instance opened the way for increased outside political and military influence in an area in which the U.S. has a vital interest. Another important point is that a unilateral restriction by the U.S. on the selling of weapons does not negate the potential buyer's need, willingness, or ability to buy. It only forces the customer to seek another source of supply.

Foreign Assistance Act of 1974

For Fiscal Year 1974, U.S. Foreign Military Sales reached an all-time high of \$8.3 billion. To a great extent, this sales level resulted from large cash sales to Middle East nations,

with Iran alone ordering almost \$3.8 billion in military equipment and services.

During 1974, Congressional concern about Foreign Military Sales focused beyond military sales credit authorizations and developing national resource allocation, to the matter of the implications of United States Foreign Policy on both cash and credit Foreign Military Sales.

The Foreign Assistance Act of 1974, a further amended version of the basic act of 1968, was signed by the President on December 30, 1974. Major features of the new act relevant to Foreign Military Sales program restrictions and constraints include:¹⁴

1. Removal of the \$150 million ceiling upon the Military Assistance Program and Foreign Military Sales Program for Latin America that was initially included in the 1968 Foreign Military Sales Act.
2. Foreign Military Sales to Chile were prohibited.
3. A ceiling of \$145 million for Foreign Military Sales and Military Assistance Program for the Republic of Korea. (This ceiling can be raised by the President to \$165 million if better observance of human rights is reported in Korea.)
4. The President must inform Congress before issuing a Letter of Offer when the amount is \$25 million or more.
5. All Foreign Military Sales to Turkey are suspended unless and until the President certifies to Congress

that Turkey is not using American Military Aid in Cyprus and that "substantial progress" toward agreement has been made regarding Turkish Military Forces in Cyprus.

During 1974, Congress continued to evaluate and reassert its role in the selling and conduct of Foreign Military Sales. The Congress showed concern for the human rights of individuals of foreign countries and for the needs of those in lesser developed countries. The Foreign Assistance Act of 1974 required termination or substantial reduction of assistance to any country that violates the human rights of its people. Relative to the human needs aspect, Congress felt that underdeveloped countries would expend their resources for arms at the expense of social and economic development. Section 51 of the Foreign Assistance Act of 1974 expresses Congressional concern, stated in part as follows:

"It is the sense of Congress that the recent growth in international transfers of conventional arms to developing nations - (1) is a cause for grave concern for the United States and other nations in that in particular areas of the world it increases the danger of potential violence among nations, and diverts scarce world resources from more peaceful uses; and (2) could be controlled progressively through negotiations and agreements among suppliers and recipient nations."¹⁴

One of the most significant areas where the Congress attempted to strengthen its role in shaping Foreign Policy was

in the building and commitment of the U.S. military power. To this end, Congress passed the largest national defense appropriations bill in the history of the nation. (\$83.6 billion)¹⁶
International Security Assistance and Arms Export Control Act of 1976

Over the past years, increased Congressional and public attention had been focused on the dramatic increases in the volume of the U.S. Foreign Military Sales program. For the Fiscal Year 1975, the Foreign Military Sales were almost \$10 billion. This growth, due partly to a reduction in military assistance, caused considerable controversy over the program's operation and direction. Although the Executive Branch had continuously given the Congress details of the program's operation and explanations of its growth, concern and dissatisfaction over many issues continued.

The moral and political arguments appeared to dominate the debate over the U.S. activity in international arms trade. Members of Congress were concerned that rapid growth of U.S. arms transfers abroad had taken place without proper consideration being given to the possible destabilizing effects of such transfers. Among the concerns were the potential effects on the stimulation of regional arms races; encouragement of certain countries' tendencies to place too much emphasis on military considerations at the expense of social-humanitarian concerns; and identification of the United States with regimes, which, for one reason or another might appear to adopt extreme repressive practices.¹⁶

As a result of these dynamic forces, the Foreign Military Sales Acts of 1974 and 1975 were revised extensively by the International Security Assistance and Arms Export Control Act of 1976. This act is known as the Humphrey/Morgan Act and was passed into law on June 30, 1976. The stated purpose of this bill was 1) to revise the United States policies concerning foreign military grant assistance and military sales and exports, and 2) to expand and strengthen Congressional procedures for overseeing of military assistance and sales programs. To fulfill these stated purposes, the law ~~was~~ designed to achieve five basic objectives.¹³

1. Shift the focus of U.S. arms sale policy from that of selling arms to controlling arms sales and exports.
2. To provide the Congress additional information about, and expanded and strengthened control over, arms transfers.
3. To provide the public with more information about government arms sales actions.
4. To reduce significantly, over the next year and a half, the number of military grant assistance programs and U.S. military missions abroad, and require a specific authorization for any grant programs or missions after that.
5. To reduce the cost of military assistance grants.

Congress felt that a major feature of the bill was to bring American arms export activities into the open. It felt that too

much of the sales programs in the past had been carried out in secrecy. To be accepted by the American people, the arms export activities must stand up under the light of public scrutiny. It was felt that public scrutiny on the arms sales would help to bring about a more rational, publicly acceptable, policy.

The following summarizes the major provisions of TITLE II of the International Security Assistance and Arms Export Control Act of 1976 on the Foreign Military Sales activity.¹³

Section 201 - Change in title and restriction on commercial sales.

The Foreign Military Sales Act title was changed to the Arms Export Control Act to reflect the change in policy included in the act which was designed to emphasize greater control over U.S. arms exports. To accomplish this desired control, commercial sales of military equipment directly to a foreign government was deemphasized. No commercial export license may be issued for the sale of major defense equipment valued at \$25 million or more.

Section 202 - Statement of policy.

This section stresses the policy of the United States to accept leadership in the world to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflicts. The President is to undertake a concerted effort and conduct studies on how to achieve world-wide arms sales limitations.

Section 203 and 204 - Transfer of defense articles and services.

The President, thirty days prior to giving his consent, must provide to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, a written certification of the proposed transfer of U.S. origin defense articles from one country to another. The Congress may veto this proposed transfer by passage of a concurrent resolution. Furthermore, any certification submitted to the Congress shall be unclassified (classified information submitted separately) to permit public disclosure.

Section 205 - Sales from stock.

This section is revised extensively to address, in detail, the determination of cost and interest to be charged to a foreign government or international organization for defense articles or defense services being sold from stock. Included in the cost will be the administrative services, plant and production equipment cost, and a proportionate amount of any nonrecurring cost of research, development, and production of major defense equipment.

Section 206 - Sales from stocks affecting U.S. combat readiness.

Any sales of defense articles or defense services which could have a significant adverse effect on the combat readiness of the U.S. Armed Forces would be kept to a minimum.

To control this, the President would submit to Congress a written statement relative to the proposed sale. The written statement shall include:

1. The country or international organization.
2. The dollar value of the proposed sale.
3. Description of defense articles or services.
4. Full description of sale impact on the combat readiness of U.S. armed forces.
5. Justification, including certification, that the sale is important to the security of the United States.

Section 207 - Procurement for cash sales.

This section is amended to provide for charging interest on any net amount that a country or international organization is in arrears. These applied interest rates are determined by the Secretary of Treasury and the computation techniques are specified within this amendment. This application of interest applies to any dependable undertaking. (guaranteed cost reimbursement to U.S. Gov't)

Section 208 - Extension of payment period for credit sales.

This section provides for full payment of sales made on the credit basis to be extended from "ten years" to "twelve years". This amendment did not affect existing financial agreements, but applied to all pending or future sales.

Section 209 - Annual estimate and justification for sales programs.

The Presidential reporting requirement to Congress is expanded in this section to include an annual estimate and justification for Foreign Military Sales. This report is to include:

1. An estimate of the amount of sales, a detailed explanation of the foreign policy, and the U.S. national security considerations involved in these sales.
2. An estimate of the amount of credits and guarantees, by country.
3. A list of all findings, by country, relative to how the anticipated sale will strengthen the security of the U.S. and promote world peace.
4. An arms control impact statement for each country which will address the arms control efforts relating to that country, and the stability of the region that includes that country.

In providing this report to the Congress, the President is to make every effort to submit the information in an unclassified form so that the public disclosure can be achieved.

Section 210 - Military sales authorization.

This section was amended to reflect the appropriation ceilings authorized for Foreign Military Sales credits

"not to exceed \$1,039,000,000 for the fiscal year 1976 and not to exceed \$740,000,000 for the fiscal year 1977".

This section specified the not-to-exceed aggregate credits authorized for both fiscal years 1976 and 1977. In addition, it specifies the special consideration to be given to Israel, both from a credit viewpoint and a repayment period consideration. Israel is the only country identified in this section and is authorized to get no less than 60% of the total credit available in 1976 and 50% in 1977.

Section 211 - Reports on commercial and government military exports; Congressional action.

This section basically deemphasizes the use of commercial sale, through export licenses, of major defense equipment to foreign governments or international organizations. Commercial sales through licenses are limited to major defense equipment sales of \$25 million or less. This section puts additional reporting requirements on the President, including very detailed analysis of impacts and capabilities of the country involved in the sale, and the reason why the sale is important to the national interest of the United States.

Section 212 - Control of licenses with respect to arms export and import.

This section was amended to authorize the President to designate those defense articles or defense services that

shall constitute the United States Munitions List. In addition, this section authorizes the President to control the import and export of defense articles and defense services in the furtherance of world peace, national security, and foreign policy.

Limitation on export licenses and penalties for violation are clearly specified in this section.

Section 213 - Cancellation and suspension of licenses and contracts.

This section was amended to address the circumstances and unusual conditions which might compel the United States Government to cancel or suspend an existing license or contract. Basically, an export license can be revoked, suspended, or amended by the Secretary of State without prior notice whenever the Secretary deems such action to be advisable.

The remaining TITLE II Section (214-218) which was amended by the International Security Assistance and Arms Export Control Act of 1976, deals with administrative expenses, definitions, and additional reporting requirements.

The TITLE III, General Limitations Section, of the International Security Assistance and Arms Export Control Act of 1976 identifies specific responsibility and obligations of recipient countries of U.S. Military assistance. The "concern" of the Congress is expressed throughout these sections and basically reflects man's concern for his

fellow man. Specifically, the areas addressed in these sections are:

1. Human rights.
2. Prohibition against discrimination.
3. Prohibition of assistance to countries granting sanctuary to international terrorists.
4. Prohibiting assistance to ineligible countries.
5. Nuclear transfer.

SECTION IV

PROCEDURES FOR PROCESSING A FOREIGN MILITARY SALE

Restraints and Prerequisites

The President of the United States determines which countries and international organizations are eligible for Foreign Military Sales in accordance with the current Foreign Military Sales Act. Further, the President has the authority to set the terms and conditions for such Foreign Military Sales. The International Security Assistance and Arms Export Control Act of 1976 set forth the major constraints which govern the Foreign Military Sales activities. Before any country or international organization can be considered for a Foreign Military Sale, the following prerequisites must be met: 9,17

1. That the sales will be approved only when consistent with:
 - a. The United States Foreign Policy interest.
 - b. The guidelines of the Foreign Assistant Act.
 - c. The content and character of the military requirement of the customer.
 - d. The customers financial and economic capability.
2. That the sale or credit guarantee would not be made to any military dictator who denies the basic human rights or social progress of its people. (The President may waive this limitation if he determines that it is in the interest of the security of the United States.)

3. That the purchasing country or international organization agrees not to sell or transfer possession or title of any item purchased from the U.S. without prior approval of the United States.
4. That the sale will be made only for the purpose of internal security, legitimate self-defense, and control of civic action, or for collective arrangements such as the United Nations.
5. That the Foreign Military Sales credit (if extended) will be repaid within twelve years in U.S. dollars.
6. The arms control consequences must be taken into consideration when evaluating a potential FMS.
7. That the munitions licensing requirements which control the export and import of arms remain in effect.

Further, the eligibility of a country or international organization depends on how the potential purchaser has been classified. This classification is determined consistent with the United States Foreign Policy objectives, and identifies eligible countries as either category "A" or category "B". The category "A" countries have been pre-cleared by the State Department and are authorized to submit requests for military sales directly to the military department responsible for the particular item. The category "B" countries must submit a request to the State Department for review and approval prior to any action being taken by the Department of Defense. (A given country may belong to both category "A" and category "B", depending upon the material and service desired.)

Determination of Type of Sale

The Foreign Military Sales are divided into two types of transactions: commercial military sales, and government military sales. In the commercial sales, the United States firm sells directly to the foreign buyer under an export license issued by the Commerce Department. The government military sales involve government-to-government transaction and once the sale is approved, it is implemented and managed by the Department of Defense.

Before initiating a request for a sale, the potential buyer must first determine whether the article is available and can be bought directly through U.S. industry. Although previously, it was the intent of the Congress and the preference of DOD to maximize the "commercial sales" channels as much as possible, the passage of the International Security Assistance and Export Control Act of 1976 changed this emphasis. In addition to this legislation, there are several other circumstances which move the sales toward the government-to-government Foreign Military Sales. These reasons are:¹⁷

1. In cases where an end item incorporates government furnished equipment, such as engines or instruments for an aircraft, sales by private industry are precluded under existing law and government military sales are dictated.
2. Classified equipment or data must be delivered through government channels only.
3. Sales committing future use of the U.S. logistics system

by a foreign government must be conducted through the ~~government-to-government~~ Foreign Military Sales channel.

4. In special situations, the U.S. Government may desire to exercise control over a sale by keeping it in the government-to-government channel.

In addition, most foreign buyers indicate the desire to procure under government controlled Foreign Military Sales procedures. Reasons offered include a preference for dealing with the United States Government as opposed to private industry representatives; a lack of managing and expertise on the part of foreign governments; and a desire to acquire follow-on logistical support through government channels.

The potential buyer, having determined that the sale should be handled as a government-to-government Foreign Military Sale, should make a formal request for a Letter of Offer and Acceptance, DD Form 1513. If the potential buyer is a category "A" country, the request should be submitted directly to the Department of Defense. If the potential buyer is a category "B" country, the request should be submitted to the State Department. The category "B" requests are coordinated between the State Department and Department of Defense, Defense Security Assistance Agency.

Letter of Offer and Acceptance (DD Form 1513)

In response to the buyer request, a Letter of Offer and Acceptance (DD Form 1513) will be prepared. The DD Form 1513 is the heart of the government-to-government Foreign Military Sales case, and therefore requires extreme care in the preparation and close scrutiny during the approval process.³

As the heart of the program, the DD 1513 is the vehicle used by foreign governments to purchase U.S. arms to increase their self-reliance in the defense of their country. It is also the device with which various foreign countries judge the United States Government as it operates to deliver the defense articles and services in a timely manner and at a reasonable cost. It provides an **extensive** amount of visibility because of the emotionally charged issue which some countries make of such a program conducted to support their defense efforts.

Failure by the United States Government to perform as agreed to in the Letter of Offer and Acceptance usually creates a deep resentment and a possible hostility within the foreign nation. It is, therefore, imperative that personnel involved in the processing and administration of the DD Form 1513 recognize that the credibility of the United States Government is at stake each time a Letter of Offer is accepted and a contract is created.³

Prior to forwarding an offer to the foreign government, the military department will obtain the concurrence of the Defense Security Assistance Agency (DSAA) and of the Congress. The Defense Security Assistance Agency requires that approval be obtained for Letters of Offer in the following categories:¹⁷

1. Sales to Latin America and African countries.
2. Sales of \$1 million or more to Bahrain, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yeman Arab Republic.
3. Sales of major weapon systems.

4. Sales of end items with a value exceeding \$5 million.
5. Sales involving a surcharge for nonrecurring research and development as prescribed in the Department of Defense Directive 2140.2.
6. Sales involving research, development, test, and evaluation for items which are not standard in the Department of Defense inventory.
7. Sales of technical data packages which could result in establishment of a foreign production capability.
8. Sales including agent fees.

In addition, Letters of Offer for sales exceeding \$1 million in some cases, and \$25 million in all cases, must be submitted to the Congress prior to being presented to the foreign government. Congress has thirty calendar days to consider the proposed sale and may register its objection by passing a concurrent resolution.

The Letter of Offer and Acceptance specifies the terms and conditions which both governments are expected to abide by and/or fulfill. Although additional terms and conditions may be made a part of the agreement, the most pertinent obligations of the parties in a standard case are as follows:¹⁷

1. The United States Government:

- a. Agrees to procure items or services under the most advantageous terms and conditions available, employing the same contract clauses, the same contract administration, and the same inspection procedures as Department of Defense uses

in procuring in its own behalf, except as requested by the purchaser and agreed to by the Defense Department.

- b. Advises that special warranty terms must be requested and paid for by the purchaser if desired.
- c. Agrees to correct deficiencies existing prior to passage of title.
- d. Advises that the price of items and delivery projections are estimates and that the final price will represent the total cost to the United States Government.
- e. Reserves the right to cancel the order prior to delivery and to pay the resulting termination costs.

2. The Purchaser:

- a. Agrees to make payment in U.S. dollars under the cash or credit terms specified in the agreement.
- b. Shall furnish shipping instructions and obtain export licenses for items not currently exported by the U.S. Government.
- c. Shall accept title at the point specified in the agreement.
- d. Shall reimburse the U.S. Government for all costs incurred in fulfilling the agreement

even though it might exceed the estimate included in the agreement.

- e. May cancel the order prior to delivery and pay resulting costs.
- f. Shall use items only for purposes specified in applicable defense agreements or treaties, or for internal security, self-defense, or civic action if no defense agreement or treaty governs such use.
- g. Shall not transfer articles to any third party unless the written consent of the U.S. Government has first been obtained.
- h. Agrees to provide protection for classified security material equivalent to that employed by the U.S. Government and to respect any proprietary rights in defense articles, plans, and specifications.
- i. Agrees to indemnify the U.S. Government against injury or death, damage to property, or patent infringement, in connection with the agreement; and to relieve U.S. contractors from liability for loss or damage to the purchaser's property.

Price and Availability (P&A)

One of the most critical problems in preparing the Letter of Offer and Acceptance is determining an accurate Price and Availability (P&A) of the equipment to be sold. The terms and conditions

of the DD Form 1513 are that the price and availability shown therein are estimates rather than firm commitments. This point must be stressed throughout the planning, negotiation, and execution phases of a Foreign Military Sale case.⁶

During discussion and negotiations, both countries should recognize the economic, production, and budget uncertainty that contribute to the difficulties in making accurate estimates on prices and availability.

The procurement and production costs of common equipment can often be determined from historical records, but the availability of these items may be a critical factor. Not only must accurate forecasts for such items be developed for the weapon system and support being sold, but the availability of these requirements must be identified and integrated into U.S. defense plans to provide and support the U.S. weapon systems.

Another significant factor which must be taken into account when determining price and availability is the effect of economic inflation. During periods of high inflation, escalation factors are included and all costs are identified in terms of "present dollars" as well as "then year" dollars. As stated previously, the actual cost is paid by the customer in U.S. dollars. However, accurate projections of these costs in the DD Form 1513 are an important element in allowing the purchaser to forecast and budget its needs through its system of government.⁶

The defense policy outlined in Department of Defense Instruction 2140.1, 9 March, 1977, calls for uniform application of

pricing and costing of all items of equipment or services offered to eligible foreign governments.

Paragraph A5b of the Letter of Offer and Acceptance states that:

"The price of items to be procured shall be at their total cost to the U.S. Government. Unless otherwise specified, the cost estimates of items to be procured, availability determination, and delivery projections quoted, are estimates based on current available data".¹⁸

Additionally, paragraph B5 states that the purchaser "shall reimburse the U.S. Government if the final cost to the U.S. Government exceeds the amount estimated in this sales agreement."

These terms and conditions protect the U.S. Government from absorbing a loss on a Foreign Military Sale, but does not prevent embarrassment to the U.S. Government when prices charged exceed the original prices quoted, or when actual delivery date is longer than quoted.⁶

Financing Available for a Foreign Military Sale

The financing of a Foreign Military Sale to an eligible country can be accomplished either through cash financing or through one of the three types of credit assistance utilizing U.S. Government resources. The payment in all cases is stipulated in U.S. dollars.

The first and most common method of financing is cash payment. This method is used either by direct contract between

foreign governments and U.S. manufacturers or government-to-government sales under the Foreign Military Sales Program. Most all sales to Western European countries and Canada are on a cash basis.²

There are four cash options for financing a Foreign Military Sale. These four options include:¹⁸

1. Cash with order.
2. Twenty-day cash payment.
3. Dependable undertaking. (guaranteed cost reimbursement)
4. Dependable undertaking with payment 120 days after delivery. (Requires Presidential approval)

The three types of government resources available to a foreign government for Foreign Military Sale are:

1. Private guaranteed credit. Financing is arranged between non-government U.S. lenders and foreign purchasers, with the U.S. Government guaranteeing repayment of the loan to the lender.
2. Eximbank credit. Covers credit financing of defense articles and services to developed countries only.
3. FMS direct credit. The Government directly finances the procurement of a credit sale, under authority and with funds appropriated annually, by the Congress.

SECTION V

SUMMARY AND CONCLUSION

A basic conclusion drawn from this Study Project research was that Foreign Military Sales is a program conceived to further the Foreign Policy and national security objectives of the United States. Further, these policies and objectives are in a continuing process of change as a result of changing political-economical-social environment both in the United States and throughout the world.

President Carter, on May 19, 1977, made a statement relative to conventional arms transfer policy. The impetus of this statement was that the U.S. would restrain the spread of conventional weapons by reducing FY 1978 and future years Foreign Military Sales below the FY 1977 dollar volume (based on constant 1976 dollars). Further, in the future, the burden of persuasion of such sales will be on those who favor the sale, rather than those who oppose. 12, 19

It would appear that President Carter is going to face considerable difficulty in carrying out this policy, based on 1) the need for U.S. balance of payment, which is being burdened by heavy cash out-flow for petroleum; 2) the need to stabilize or reduce unemployment when faced with a slowing economy in the third quarter of 1977; and 3) the fact that the foreign governments are going to continue buying arms they feel are necessary for self-defense. If the U.S. Policy limits the sale of these desired arms, the foreign governments will purchase arms from other countries.

BIBLIOGRAPHY

Formal Reports

1. Brooks, Stephen H., and Capra, James R. "The Effect of Foreign Military Sales on U.S. Economy". Staff Working Paper, Congress of the United States, Congressional Budget Office, Washington, D.C., July 23, 1976.
2. Chaloult, Major Michael P.; Ferro, Major Philip H.; and Kroenlein, Major James H. "Guidance For Foreign Military Sales". Research study, Air Command and Staff College, Air University, Maxwell Air Force Base, Alabama, May, 1976.
3. Coleman, James T.; Coulter, Major Arthur C.; Dehen, Major James J.; Ehrlick, Clarence D.; Howo, Major William T.; and George, Major William R. "On Some Aspects of Foreign Military Sales". Research study, Air Command and Staff College, Air University, Maxwell Air Force Base, Alabama, May, 1975.
4. Coogan, Lieutenant Colonel Charles O. "Foreign Military Sales: Logistics Consideration". Research report, Air War College, Air University, Maxwell Air Force Base, Alabama, April, 1975.
5. Kaine, Wing Commander Trevor T., and Wilhite, John L. "A Buyers View of the Management of the United States Foreign Military Sales Program". Masters thesis, School of Systems and Logistics, Air Force Institute of Technology, Wright-Patterson Air Force Base, Alabama, May, 1976.
6. Materna, Captain Robert D. "Foreign Military Sales: A Study of Preparation of the United States Department of Defense Offer and Acceptance (DD Form 1513) for a USAF Major Weapon Systems Package Sale". Masters thesis, School of Systems and Logistics, Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio, 1976.
7. McChesney, Jack Lester. "The Evolution of the Foreign Sales Program and Its Impact on Defense Procurement Policies and Procedures". Doctoral dissertation, School of Government and Business Administration, The George Washington University, Washington, D.C., May 1976.

8. Parr, Major John D. "Foreign Military Sales Versus Direct Commercial Sales: A Defense Management Problem". Research study, Air Command and Staff College, Air University, Maxwell Air Force Base, Alabama, May, 1975.
9. Peterson, Jerry L. "Foreign Military Sales: DOD Activities Versus Congressional Interest". Study Project Report, Defense Systems Management School, Fort Belvoir, Virginia, November 1975.
10. Wilson, Doug. "The U.S. Government Role in International Trade". Sperry Rand Corporation, Phoenix, Arizona, revised May 1, 1976.
11. Winn, Squadron Leader Lynton T., and Dunlap, Captain James J. "Foreign Military Sales Legislation: Impact on Achievement of United States Foreign Policy Objectives and Its Implication for the Department of Defense". School of Systems and Logistics, Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio, August, 1975.

Official Documents

12. International Security Assistance Act of 1977. Public Law 95-92, Government Printing Office, August 4, 1977.
13. International Security Assistance and Arms Exports Control Act of 1976. Public Law 94-329, Government Printing Office, June 30, 1976.
14. Foreign Assistance Act of 1974. Public Law 93-559, Government Printing Office, December 30, 1974.
15. United States Government Manual 1976/1977. Office of the Federal Registrar, National Archives and Records Services, General Services Administration, Washington, D.C., revised May 1, 1976.
16. Foreign Military Sales, A Growing Concern. Report to the Congress by the Comptroller General of the United States, United States General Accounting Office, Washington, D.C., June 1, 1976.
17. Department of Defense Directive 5105.38-M, Military Assistance and Sales Manual. Defense Security Assistance Agency, revised January 15, 1977.

18. Department of Defense Instruction 2140.1, Pricing of Sales of Defense Articles and Defense Services to Foreign Countries and International Organizations. March 9, 1977.

News Release

19. U.S. Presidential Statement. Conventional Arms Transfer Policy. Office of the White House Press Secretary, May 19, 1977.